

Title 62.1 - Chapter 25 - Ground Water Management Act of 1992

§ 62.1-254. Findings and purpose.

The General Assembly hereby determines and finds that, pursuant to the Groundwater Act of 1973, the continued, unrestricted usage of ground water is contributing and will contribute to pollution and shortage of ground water, thereby jeopardizing the public welfare, safety and health. It is the purpose of this Act to recognize and declare that the right to reasonable control of all ground water resources within this Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ground water of this Commonwealth and to ensure the public welfare, safety and health, provision for management and control of ground water resources is essential.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

§ 62.1-256. Duties of Board.

The Board shall have the following duties and powers:

1. To issue ground water withdrawal permits in accordance with regulations adopted by the Board;
2. To issue special orders as provided in § 62.1-268;
3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;
4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;
5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;
6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § 62.1-267;
8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and
9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § 62.1-268.

§ 62.1-257. When Board may initiate a ground water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there may be reason to believe that:

1. Ground water levels in the area are declining or are expected to decline excessively;
2. The wells of two or more ground water users within the area are interfering or may reasonably be expected to interfere substantially with one another;
3. The available ground water supply has been or may be overdrawn; or
4. The ground water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of ground water which has a harmful or detrimental effect on the quality or quantity of such waters.

B. If the Board finds that any one of the conditions required above exists, and further finds that the public welfare, safety and health require that regulatory efforts be initiated, the Board shall by regulation declare the area in question to be a ground water management area. The Board shall include in its regulation a definition of the boundaries of the ground water management area. The Board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies.

§ 62.1-258. Use of ground water in ground water management area.

It shall be unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any ground water, other than in accordance with a ground water withdrawal permit or as provided in § 62.1-259, subsections C, D and F of § 62.1-260, and subsection C of § 62.1-261.

§ 62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the Board.

§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to said certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § 62.1-266, and may withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the Board in its discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § 62.1-263.

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit. The persons shall file an application for a ground water withdrawal permit on or before December 31, 1995, and may continue withdrawing ground water under the terms and conditions of their certificate or permit until the required ground water withdrawal permit application is acted on by the Board, provided that the ground water withdrawal permit application is filed on or before December 31, 1995. The Board shall issue a ground water withdrawal permit for the total amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated to have been achieved through water conservation and (ii) such amount as the Board in its discretion deems appropriate upon consideration of the factors set forth in § 62.1-263. This subsection shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit or certificate for a public water supply well for supplemental water during drought conditions, which shall apply for a ground water withdrawal permit as provided in § 62.1-265.

E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period

between July 1, 1983 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed by the appropriate deadline.

G. Persons applying for a ground water withdrawal permit may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage and water conservation as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage and water conservation, upon consideration of the factors set forth in § 62.1-263.

H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application for a ground water withdrawal permit prior to the expiration of the applicable period creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

§ 62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.

A. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the five years preceding said declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the ten-year period preceding such declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed within the six-month period following the declaration.

D. Persons applying for a ground water withdrawal permit issued pursuant to this section may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage, upon consideration of factors set forth in § 62.1-263.

E. Failure by any person covered by the provisions of subsection A or B to file an application for a ground water withdrawal permit within the six months following the declaration of the ground water management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ 62.1-260 and 62.1-261, shall include a water conservation and management plan approved by the Board. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve all water conservation plans in compliance with subdivisions (i) through (iv) of this section.

§ 62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses.

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

§ 62.1-264. Permits for public water supplies.

To ensure that any ground water withdrawal permit issued for a public water supply does not impact a waterworks operation permit issued pursuant to § 32.1-172, the maximum permitted daily withdrawal shall be set by the Board at a level consistent with the requirements and conditions contained in the waterworks operation permit. This section shall not limit the authority of the Board to reduce or eliminate ground water withdrawals by a waterworks if necessary to protect human health or the environment. In promulgating regulations to implement this section, and in administering such regulations and this chapter, the Board shall consult and cooperate with the State Health Department to the end that effective, equitable management of ground water and safeguarding of public health will be attained to the maximum extent possible.

§ 62.1-265. Drought relief wells.

A political subdivision, or an authority serving a political subdivision, holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application for a ground water withdrawal permit on or before December 31, 1992. The Board shall issue ground water withdrawal permits for supplemental drought relief wells for the amount of ground water needed annually to meet human consumption

needs as documented by a water conservation and management plan approved by the Board as provided in § 62.1-262. Any ground water withdrawal permits for supplemental drought relief wells shall be issued with the condition that withdrawals may only be made at times that mandatory water use restrictions have been implemented pursuant to the water conservation and management plan.

§ 62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;
2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;
3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or
4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-267. Issuance of special exceptions.

A. The Board may issue special exceptions to allow the withdrawal of ground water in cases of unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the Board may consider the amount and duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any person requesting a special exception shall submit an application to the Board containing such information as the Board shall require by regulation adopted pursuant to this chapter.

C. Any special exception issued by the Board shall state the terms pursuant to which the applicant may withdraw ground water, including the amount of ground water that may be withdrawn in any period and the duration of the special exception. No special exception shall be issued for a term exceeding ten years.

D. A violation of any term or provision of a special exception shall subject the holder thereof to the same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal permit.

E. The Board shall have the power to amend or revoke any special exception after notice and opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or revocation of a ground water withdrawal permit.

§ 62.1-268. Issuance of special orders.

A. The Board may issue special orders (i) requiring any person who has violated the terms and provisions of a ground water withdrawal permit issued by the Board to comply with such terms and provisions; (ii) requiring any person who has failed to comply with a directive from the Board to comply with such directive; or (iii) requiring any person who has failed to comply with the provisions of this chapter or any decision of the Board pertaining to ground water to comply with such provision or decision.

B. Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service by certified mail, sent to the last known address of such person, with the time limits counted from the date of such mailing; however, if the Board finds that any such person is grossly affecting or presents an imminent and substantial danger to (i) the public welfare, safety or health; (ii) a public water supply; or (iii) commercial, industrial, agricultural or other beneficial uses, it may issue, without advance notice or hearing, an emergency special order directing the person to cease such withdrawal immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel such emergency special order. If a person who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-269, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a withdrawal, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

C. The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-270 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-270. Such civil charges shall be instead of any

appropriate civil penalty which could be imposed under subsection A of § 62.1-270 and shall not be subject to the provisions of § 2.1-127.

§ 62.1-269. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, standard or requirement of the Board pertaining to ground water, any provision of any ground water withdrawal permit issued by the Board, or any provision of this chapter may be compelled to obey same and to comply therewith in a proceeding instituted by the Board in any appropriate court for injunction, mandamus or other appropriate remedy. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

§ 62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board pertaining to ground water, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the person in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

B. Any person willfully or negligently violating any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum

penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.